



US Army Corps
of Engineers
Memphis District

Public Notice

FILE NUMBER: General Permit - 46

NOTICE DATE:
May 12, 2009

Attn: Postmaster,
Please Post Until

EXPIRATION DATE:
➡ **June 2, 2009**

**PROPOSED GENERAL PERMIT
FOR CONSTRUCTION AND STABILIZATION OF
ROADWAY EMBANKMENTS AND BRIDGE ABUTMENTS
IN WATERS OF THE UNITED STATES AND
FOR THE ASSOCIATED DISCHARGE OF DREDGED AND FILL MATERIAL**

On behalf of the Mississippi Department of Transportation (MDOT), the District Engineer hereby notifies interested parties that the U.S. Army Corps of Engineers, Memphis District, and the Mississippi Department of Environmental Quality (DEQ) are considering reissuance of a General Permit and State Water Quality Certification for activities described herein. As lead district in this matter, comments should be forwarded to our sister District in Vicksburg, Mississippi as well as DEQ at the following addresses:

U.S. Army Corps of Engineers, Vicksburg District
ATTN: Anthony Lobred / CEMVK-OD-P
4155 Clay Street
Vicksburg, Mississippi 39183-3435

Mississippi Department of Environmental Quality
Office of Pollution Control
Post Office Box 10385
Jackson, Mississippi 39289-0385

e-mail: anthony.r.lobred@usace.army.mil

Comments must reach these offices by the expiration date cited above.

This statewide General Permit allows for the construction of roadway embankments and bridge abutments in waters of the United States and includes activities such as the repair and stabilization of existing roadway embankments and bridge abutments, the installation of additional traffic lanes to existing roadways, and the upgrading of bridges and other stream-crossing facilities. Construction along a new alignment is included where impacts to wetlands would be minimal.

This action is being taken pursuant to Federal regulations printed in the Federal Register on November 13, 1986, concerning permits for activities in waters of the United States. These regulations state the U.S. Army Corps of Engineers' responsibility for regulating structures or work in or affecting waters of the United States under Section 10 of the Rivers and Harbors Act of 1899 (30 Stat. 1151; 33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

Since portions of the State are within jurisdictional boundaries of four United States Army Corps of Engineers Districts, subsequent authorizations to proceed with work proposed under this General Permit will be granted by letter from the appropriate District within whose boundaries the work will be located. A map indicating the District boundaries is enclosed (enclosure 1).

This proposed General Permit contains certain limitations intended to protect the environment and natural and cultural resources. Conformance with conditions contained in the General Permit does not necessarily guarantee authorization under this General Permit. In cases where the District Engineer considers it necessary, applications will be required for individual permits. Construction, dredging, or fill operations not specifically covered by this General Permit are prohibited unless authorized by a separate permit.

General Permits may be issued for a category or categories of activities when: (1) those activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts; or (2) the General Permit would result in avoiding unnecessary duplication of the regulatory control exercised by another Federal, State, or local agency, provided it has been determined that the environmental consequences of the actions are individually and cumulatively minimal. The determination that the proposed activities comply with the requirements for issuance of General Permits was made using information which is available for inspection at the offices of the Vicksburg District's Regulatory Branch at 4155 Clay Street, Vicksburg, Mississippi.

In compliance with requirements of Section 401 of the Clean Water Act, the **Vicksburg District** will obtain water quality certification from the Mississippi Department of Environmental Quality.

The Council on Environmental Quality (CEQ) has defined mitigation to include: avoiding impacts, minimizing impacts, rectifying impacts, reducing impacts over time, and compensating for impacts. Early in the design phase of projects to be authorized under this General Permit, avoidance and minimization of impacts to wetlands and other waters of the U.S. must be considered and the least environmentally damaging practicable alternative must be selected. The remaining impacts must be compensated for to the maximum extent practicable.

In order to compensate for any unavoidable losses to jurisdictional "waters of the United States" functions associated with the work authorized by the proposed General Permit; the Mississippi Department of Transportation will develop a compensatory mitigation plan. The compensatory mitigation plan shall be fully described in accordance with 33 CFR Parts 325 and 332, Compensatory Mitigation for Losses of Aquatic Resources; Final Rule, April 2008.

REQUEST FOR AUTHORIZATION UNDER THE GENERAL PERMIT: IN ORDER TO BE AUTHORIZED BY THIS GENERAL PERMIT, THE MISSISSIPPI DEPARTMENT OF TRANSPORTATION IS REQUIRED TO SUBMIT TO THE APPROPRIATE DISTRICT ENGINEER, IN WRITING, THE FOLLOWING INFORMATION A MINIMUM OF 60 DAYS PRIOR TO THE PROPOSED BID ADVERTISEMENT DATE:

- a. Statement of the number of the General Permit under which the work is to be conducted. (General Permit-46).
- b. Statement that the work will be conducted in compliance with the terms and conditions of the General Permit, will not adversely impact adjoining properties, and will be mitigated in accordance with the terms of this General Permit.
- c. Location map showing the proposed worksite (including section, Township, Range and County).
- d. A brief description of the proposed worksite in its present condition.
- e. A brief description and 8 1/2- by 11-inch drawings of the proposed work including the method of construction or stabilization, the project dimensions, and amounts and types of excavated and fill material in cubic yards.
- f. Estimated starting and completion dates of construction.

- g. Name, mailing address, and telephone number of the person acting as the point of contact for the requested authorization.
- h. If wetlands are to be impacted, the following information is required:
 - 1) A map delineating the wetlands and copies of the associated data form(s) for routine wetland determinations from the 1987 Corps of Engineers Wetland Delineation Manual and its subsequent Regional Supplement Manual(s) covering the proposed project area(s).
 - 2) The type and date of approval of the environmental documentation by the Federal Highway Administration and a copy of their findings as required by Executive Order 11990.
- i. If the combined acreage of wetlands at a single and complete project site exceeds 1.0 acre, the application shall include a compensatory mitigation plan based on an approved wetland functional assessment methodology which takes into account the habitat quality, and quantity of the impacted area and the proposed mitigation area. Such recommendations shall include copies of all factual information (e.g. worksheets) used in performing the calculations of the functional assessment. (Note: The District Engineer will consider this recommendation in making the final decision on compensatory mitigation measures).
- j. If impacts to a natural waterway at a single and complete project site exceed 100 linear feet, MDOT shall include a compensatory mitigation plan based on an approved stream functional assessment methodology which takes into account the habitat quality, and quantity of the impacted area and the proposed mitigation area.
- k. Comments from the Mississippi Department of Wildlife, Fisheries and Parks, Mississippi Department of Archives and History, United States Fish and Wildlife Service and the Mississippi Department of Environmental Quality on the project.

Upon receipt of this information, the District Engineer will evaluate the proposal and advise either that the work is authorized under the General Permit; will request additional information, if needed; or will advise that the proposed activity will require an individual permit. Included with the letter authorizing work under the General Permit will be the number of wetland acres, if any, which must be deducted from the mitigation bank.

Special Conditions:

- a. No more than 7 acres of wetlands and other waters shall be directly impacted by the placement of fill at each single and complete crossing of a water of the United States where the proposed work involves either upgrading an existing highway within an established corridor or where the work is to be constructed along a new alignment. Any wetlands cut off from their natural hydrologic regime as a result of project work shall be considered as directly impacted.
- b. For stream or river crossings, discharges of permanent fill material and temporary fill material shall be the minimum necessary to complete the crossing. The term fill refers to earthen material, riprap, concrete, and any other materials associated with the work.
- c. The stabilization or construction work shall not interfere with navigation (including recreational boating) or adversely impact the flow-carrying capacity of the affected stream.

- d. Material to be used for fill must be nonpolluting and may be obtained either offsite or from site preparation. Offsite material shall not be obtained from wetlands outside the 7-acre limit or from other areas which may adversely affect adjacent wetlands. Any excess material shall be placed in an upland area and properly contained or stabilized to prevent entry into adjacent water bodies or wetlands.
- e. Disturbed areas on the site shall be stabilized to minimize erosion. Stabilization of erodible areas shall be accomplished by seeding or sodding as soon as practicable to restore vegetative cover. If initial revegetation is unsuccessful, reseeding or resodding shall be done until revegetation is successful. In areas subject to currents, riprap may be required for slope protection.
- f. No activity which may adversely impact a site listed in or eligible for listing in the National Register of Historic Places shall be allowed by this General Permit. Additional material shall not be taken from a known historical or archaeological site such as an Indian Mound. If the permittee, during prosecution of work authorized herein, encounters a previously unidentified archaeological or other cultural resource within the area subject to Department of the Army jurisdiction, he shall immediately notify the District Engineer. The District Engineer, in consultation with the appropriate State Historic Preservation Officer and the Tribal Archaeologists, will comply with 33 CFR 325, Appendix C, paragraph 11 (Historic Properties Discovered During Construction).
- g. The work shall not occur in a National Wildlife Refuge, State Game Management Area, or other such Federal or State lands, or lands leased to those entities without the appropriate Federal or State authorization in writing.
- h. All temporary fills must consist of nonerodible material or be protected to prevent erosion.
- i. Any materials used for temporary structures such as cofferdams, equipment pads, or temporary crossings, shall be removed as soon as practicable, and the waterway shall be restored to preconstruction contours.
- j. Disturbance to riparian vegetation shall be kept to a minimum during construction.
- k. No activity that is likely to adversely affect Federally listed threatened or endangered species, or that is likely to destroy or adversely modify the critical habitat of such species, is authorized under this General Permit.
- l. Discharges shall not restrict or impede the movement of aquatic species indigenous to the waters.
- m. All work shall be performed in a manner that will minimize increased turbidity of the water in the project area and otherwise avoid adverse effects on water quality and aquatic life especially during fish spawning season. This may require avoiding construction activities during the peak spawning months of April, May, and June.
- n. The discharge shall not adversely affect a public water supply intake or a National or State Fish Hatchery intake.
- o. The discharge shall not contain unacceptable levels of pathogenic organisms (as prescribed in standards set by the Mississippi Department of Environmental Quality) in areas used for water-contact sports.
- p. The construction activity shall not result in the permanent diversion or relocation of a stream or a river channel except where needed to align a waterway crossing to avoid potential damage to the roadway. In no case, shall any realignment extend beyond 150 feet upstream and 150 feet downstream from the centerline of a crossing structure. The construction activity shall result in neither streamflow impediment nor drain adjacent wetlands.

- q. Authorizations under this General Permit shall be valid for 3 years from the date of the authorizing letter.
- r. Current standards and practices shall be used to determine what type drainage structure is required at a particular stream crossing (box culvert, bridge, etc.).
- s. To minimize potential adverse impacts to wetlands within the right-of-way or associated with the project, the Mississippi Department of Transportation shall incorporate into each project's design all practicable measures to:
 - 1) Minimize impact on hydrology in wetland areas.
 - 2) Minimize potential for toxic spills and leaching into wetland areas.
 - 3) Minimize discharge of materials, such as silt, into wetlands.
 - 4) Maintain adequate flow through wetlands by providing culverts, ditches, and other hydrologic structures.
 - 5) Provide berms, traps, or ditches to direct potential toxic spills away from wetlands.
 - 6) Provide for animal migration to and from wetland areas or habitat corridors.
 - 7) Provide erosion and sediment control features throughout the construction phase of a project which would minimize both short- and long-term impacts to water quality.
 - 8) Provide treatment facilities which may be required to treat highway runoff which would otherwise adversely affect wetlands.
 - 9) Provide contractual provisions for stopwork orders, project staging, and other specifications pertaining to minimizing impacts on wetlands and to onsite monitoring.

General Conditions:

- a. Mississippi Department of Transportation must allow representatives from the appropriate Corps' office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of the permit.
- b. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
- c. This permit does not grant any property rights or exclusive privileges.
- d. This permit does not authorize any injury to the property or rights of others.
- e. This permit does not authorize interference with any existing or proposed Federal project.
- f. In issuing this permit, the Federal Government does not assume any liability for the following:
 - 1) Damages to the permitted project, or uses thereof, as a result of other permitted or unpermitted activities or from natural causes.

- 2) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - 3) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - 4) Design or construction deficiencies associated with the permitted work.
 - 5) Damage claims associated with any future modification, suspension, or revocation of this permit.
- g. In issuing individual authorizations under this General Permit, the Government will rely on the information and data which the permittee provides in connection with that permit application. If, subsequent to the authorization, such information and data prove to be false, incomplete, or inaccurate, this authorization may be modified, suspended, or revoked, in whole or in part, and/or the Government may, in addition, institute appropriate legal proceedings.
- h. The United States Army Corps of Engineers may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- 1) Failure to comply with the terms and conditions of this permit.
 - 2) The information provided in support of a request for authorization proves to have been false, incomplete, or inaccurate (See g. above).
 - 3) Significant new information surfaces which was not considered in reaching the original public interest decision.

This General Permit is valid for a 5-year period at which time the cumulative environmental effects of completed work will be reviewed and reissuance of the permit will be considered. However, if unforeseen adverse environmental effects result from the issuance of this General Permit, it may be modified or terminated.

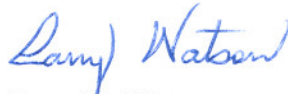
Further Information:

- a. Additional copies of this Public Notice are available upon request from this office. Requests may be addressed to: USAED, Vicksburg, ATTN: CEMVK-OD-FP, 4155 Clay Street, Vicksburg, Mississippi 39183-3435.
- b. The decision whether or not to issue a permit will be based on an evaluation of the probable impacts including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.

- c. The U.S. Army Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity.

Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

- d. Any person may make a written request for a public hearing to consider this proposed General Permit. This request must be made by the expiration date and must clearly state why a hearing is necessary. Any individual or agency may comment on the project described in this notice; however, failure to comment will be interpreted to mean that there is no objection to the proposed General Permit. All comments received will be evaluated during the review process of this proposed General Permit.
- e. Please bring this announcement to the attention of anyone you know who might be interested in this matter. Anyone wishing to make comments may communicate with us at the following address: USAED, Vicksburg, ATTN: CEMVK-OD-FP, 4155 Clay Street, Vicksburg, Mississippi 39183-3435.



Larry D. Watson
Regulatory Branch Chief,
USACE - Memphis District

